* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on May 9, 2007

\+ CRL.REV. P. 313/2007

AMAR SINGH .....PETITIONER

THROUGH Mr. L.D. Mual and Mr. S.N. Bhardwaj, Advocates

VERSUS

STATE .....RESPONDENT

THROUGH Mr. Pawan Sharma, APP for State

CORAM:
Mr. Justice S. Ravindra Bhat

1.	Whether reporters of local papers may be allowed to see the judgment.?	yes
2.	To be referred to the Reporter or not?	yes
3.	Whether the judgment should be reported in the Digest?	yes

Mr. Justice S. Ravindra Bhat:(Open Court)

1. In this revision under Section 397/401, Criminal Procedure Code, the petitioner challenges the concurrent findings of the Courts by which he was convicted of the offences under Section 279 /304A, Indian Penal Code (IPC) and sentenced to undergo six months simple imprisonment (for the offence under Section 279) and one years simple imprisonment (for the offence under Section 304A).

2. The facts are that according to the prosecution on 13.09.99 at 10 A.M., at a main 100 ft. road, the petitioner was found driving a bus in a rash and negligent manner. This led to an accident in which one Joginder Singh, a by-stander, in the bus stand, was struck and received fatal injuries. In support of its case, the prosecution relied upon the deposition of 12 witnesses. It was alleged that a Constable, one Niranjan (PW-11) removed the injured to the hospital. Being an eye-witnesses, he deposed about his presence on duty at the concerned bus stand when at about 10:10 A.M., the bus driven by the petitioner, proceeded very fast and hit a person standing there. The bus sped away. He identified the bus number and narrated how a PCR Van arrived at the spot, how he took the injured to the hospital and later identified the driver of the bus, i.e. the petitioner. This witness as well as all other prosecution witnesses were cross-examined. The trial Court, by its judgment dated 07.08.06 convicted the petitioner and awarded the sentence impugned. The appeal of the petitioner before the Additional Sessions Judge was rejected on 28.04.07.

3. Learned counsel contended that the judgments of the Courts below are vitiated because they have believed the conjectures and surmises of the prosecution. It was contended that the strongest eye-witness PW-11 was a planted witness. The efforts of the defence, i. e. the petitioner to prove that he was in fact not present at the site by production of the duty roster despite an application under Section 311 Cr. P.C., were frustrated. It was contended that if this course had been adopted, the petitioner would have conclusively proved that PW-11 was not at the site and could not, therefore, have claimed to be an eye-

witness.

4. Learned counsel claimed that the conduct of PW-11, even if the facts alleged by him were assumed to be true were unnatural to say the least as, being charged with enforcement of the law, if indeed PW-11 had witnessed the incident, the least expected of him was to give a chase which he admittedly did not.

5. Learned counsel lastly contended that, taken as a whole, the findings arrived at by the Courts below were unsupported by the evidence which nowhere showed that the petitioner drove the vehicle in a rash and negligent manner. It was submitted that the mere allegation of the bus having been driven at a fast speed did not lead to the inference that it was driven in a rash and negligent manner.

6. The Appellate Court, in its impugned judgment, *inter alia,* held as follows:

> *"8. Having heard arguments from both the sides and after perusal of the record, I do not find any infirmity or illegality in the order as learned MM has carefully scrutinized the evidence in the light of available material on record as regard to the identity of the accused driving the erring vehicle. The statement of PW-1 Ct. Niranjan Sharma recorded at GTB Hospital, Delhi where injured was removed by him, is worth mentioning. It, inter alia, mentions that on 13.09.99, he was present at the bus stand of 212 on his duty from 8 AM to 8 PM at about 10:10 PM. Bus No. DEP 9770 came from the Seemapuri side being driven by bus driver in a fast speed and in a rash and negligent manner and it struck the pedestrians standing at the bus stand waiting for bus and ran towards Durgapuri. In the meanwhile, PCR Van baker 13 came. It passed the message through the wireless set. The MLC of the victim shows arrival of victim at 10:35 AM on 13.9.99 and victim was brought by PW-11 Ct. Niranjan Sharma whose number is also mentioned as 1496 PS Nand Nagri. It at least goes to show that the victim was brought from the place of accident to the hospital by PW-11 Ct. Niranjan Singh. At this stage, it cannot be said that by not proving the duty roaster of this Constable, an inference can be reached that he was not on*

duty at that place on the fateful day. It can be presumed that official duties were performed in normal course of nature and there is no reason as to why just to solve the case, IO will introduce a false witness. Even the statement of TI Brahm Singh PW8 went unrebutted who testified that the accused was on duty in the bus No. DEP 9770 from 4:20 AM to 12:20 PM on 13.09.99 at DTC bus route No. 205 from Seemapuri to Koriya Pull. Accused was caught on the same bus route by the PCR officials."

7. I have carefully considered the judgments of the Courts below and the submissions made on behalf of the petitioner. In this case, the death occurred due to the accident on 13.09.99; the Courts convicted the petitioner of the offence he was charged with and found that he had driven the bus in a rash and negligent manner. PW-11 was an eye-witness. The objection to his testimony, i. e. his being a planted witness, does not appear to be correct. During the trial, no attempt was made to impeach his version about his presence – indeed he was extensively cross-examined. The effort of the petitioner to have the *Roznama* summoned at the appellate stage, therefore, cannot be viewed as an entirely innocent exercise. It is more in the nature of a desperate attempt to evade and deflect his role. The testimony of PW-11 was found to be credulous. I am not persuaded by the submissions on behalf of the petitioner that his not giving a chase was unnatural. If a public servant or a police man chooses to help an injured victim that surely cannot be considered unnatural or a circumstance impeaching his credibility.

8. The scope of revisional jurisdiction in matters where the Court has to examine the factual findings, and concurrent ones at that, are extremely limited. The High Court can, if it is convinced that the approach of the Courts were palpably illegal or led to a manifest failure of justice, intervene under exceptional

circumstances. The judgments of the Courts below do not indicate any infirmity of such nature as to justify the exercise of revisional jurisdiction. So far as the sentence is concerned, this is not an incident where the accused had, relatively speaking, to undergo the trauma of prolonged trial for about 15-20 years. The Courts below considered all the circumstances, aggravating as well as mitigating, and sentenced the petitioner. I do not find any infirmity in their approach, as regards this aspect too.

9. In view of the above conclusions, this petition has to fail; it is accordingly dismissed.

S.RAVINDRA BHAT, J
JUDGE

MAY 9, 2007